IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4829 of 1999
With
SPECIAL CIVIL APPLICATION No. 4910 of 1999
With
SPECIAL CIVIL APPLICATION No. 4860 of 1999
With
SPECIAL CIVIL APPLICATION No. 4558 of 1999
With
SPECIAL CIVIL APPLICATION No. 4564 of 1999
With
SPECIAL CIVIL APPLICATION No. 1084 of 1999
With
SPECIAL CIVIL APPLICATION No. 1085 of 1999
With
SPECIAL CIVIL APPLICATION No. 1086 of 1999
To
SPECIAL CIVIL APPLICATION No. 1089 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SAIYAD MOHAMAD SALIM NOOR MOHAMAD - Petitioner(s)

Versus

STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :

MR MC SHAH for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1 - 3.
MR MB PARIKH for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 21/12/2005

ORAL JUDGMENT

1. In this group of petitions, since similar question of law and facts arise, they have been heard together and are being disposed of by this common order.

2. For the purpose of recording the factual controversies, averments made in Special Civil Application No.1084/1999 can be looked into. It is the case of the petitioner herein that a public auction was held by Vijapur Nagarpanchayat (since converted into Vijapur Nagarpalika)for giving 36 plots of city survey no.3252 of Vijapur on lease. The auction was held in the year 1968. The plot no.10 therein was given on lease to one Shri Gulam Nabi Fajalbhai Mansuri in the year 1968. Said Shri Gulam Nabi Fajalbhai Mansuri put up a construction on the plot no.10 and accordingly municipal census number of the constructed shop was given as 4/2/13 and 4/2/13/1. It is the case of the petitioners that Vijapur Nagarpalika being the owner of the city survey no. 3252 had the power to lease out the sub plots and the highest bidders after paying the price were given lease of the plots in question. Since

then they have been enjoying the use and occupation of the plots and have also carried out construction. The petitioners herein were tenants of Shri Gulam Nabi Fajalbhai Mansuri and are carrying on their business in the name of “Vasudev Hardware Stores” in the year 1970. They thereafter purchased the rights of Shri Gulam Nabi Fajalbhai Mansuri over the subplot and constructed shops in the year 1993-1994. They are thus in lawful use, occupation and possession of the shops in question. It is stated that the petitioners are also paying necessary premium and other taxes of the Nagarpalika since their occupation.

3. Similar is the case of other petitioners who also claim to be in possession and occupation of different constructed shops in various plots which were plotted out by Nagarpalika within the city survey no. 3252.

4. In Special Civil Application No. 4910/1999, there are minor factual differences which are though not significant so far as the legal issues are concerned, it would be appropriate to take note of these factual aspects. The petitioner in Special Civil Application No. 4910/1999 has been alloted the plot out of city survey no. 3252 by Vijapur Nagarpalika. The petitioner

was alloted the said land on account of his being migrant from Pakistan and has settled in Vijapur. The petitioner has been enjoying his allotment by paying rent regularly and has also constructed a small shop thereof. He received notices dated 02-02-1999 and 05-02-1999 both from Vijapur Nagarpalika asking him to remove his construction. In his case also the stand of the Government is similar. In the nutshell therefore, he has also occupied the shop since many years and it is not the case of the respondents that the construction is without permission or amounts to encroachment on public land.

5. All the petitioners involved in this group of petitions are either original petitioners who had successfully bidded for the plots in question in public auction held in the year 1968 or they have subsequently become the tenants or purchasers of the shops from the original bidders. Thus, all the petitioners claim to be in lawful possession of the constructed shops and are claiming to be carrying on their businesses since several years. All the petitioners have been paying regularly the tax payable to the Nagarpalika and there was no hindrance in their use and occupation of the shops in question till year 1999. It is the case of the

petitioners that a show cause notice came to be issued by the State Government on 02-02-1999 calling upon the petitioners to remove the construction since the same was without proper permission and since the construction encroached upon the part of the public road. By the show cause notice in question it was conveyed to the petitioners that the construction should be removed before 05-02-1999 and if the petitioners fail to do so, the same will be removed by the Government at the cost of the petitioners.

6. The petitioners approached this Court challenging the proposed action of the Government. It is the case of the petitioners that the construction in no manner can be said to be illegal. That no part of the construction which the petitioners occupy encroaches any portion of public road or is in any manner illegal or unauthorised. It is the case of the petitioners that the construction was carried out with prior permission from the Nagarpalika and that State Government erred in issuing notice dated 02-02-1999 since construction was neither unauthorised nor did the same encroach on any part of the road. The petitioners questioned the authority of the State Government to issue the show cause notice in question. In this background Special

Civil Application No. 1048/1999 came to be filed challenging the notice dated 02-02-1999, further praying for a direction restraining the respondents from disturbing the petitioners of their possession in respect of plot no.10 out of city survey no.3252. This Court after initially issuing notice and granting ad interim relief eventually admitted the petition. Several other similarly situated persons approached this Court by filing different petitions. All these petitions were also admitted and were ordered to be heard with Special Civil Application No.1084/1999. Accordingly, this group of petitions has been placed before this Court for final hearing.

7. I have heard the learned advocates appearing for both the sides.

8. Primarily the contention of the petitioners is that they came in possession of the constructed premises on various sub plots which are part of city survey no. 3252 of Vijapur Nagarpalika legally. It was the case of the petitioners that it was pursuant to the public auction held in the year 1968 that plots were leased out to highest bidder. These plot holders put up construction with prior permission from the

Nagarpalika. Some of the petitioners are original bidders and rest are in possession legally receiving through such bidders. In effect therefore, all the petitioners claim possessory title over the constructed properties through a public auction held by Nagarpalika in the year 1968. Their case is simple. They contend that their construction is neither illegal nor impermissible. That the construction was put up after prior permission from Nagarpalika. The construction was recorded in the municipal corporation and they have been paying municipal tax regularly. They have been doing their businesses and enjoying the constructed properties since several decades. They also denied the suggestions that any part of the construction encroaches on public road.

9. On the other hand, the State Government has filed affidavit contending inter-alia that the plot bearing survey no. 3252 is a Government land and the same was reserved plot and the petitioners have encroached upon the same by constructing shops. Through the affidavit and through oral submissions only objection taken to the construction is the plot no. 3252 never belonged to the Nagarpalika and the same was wrongly leased out by the Nagarpalika to various bidders. As noted, earlier

though a show cause notice indicated that the construction was unauthorised and that the same was encroaching on a public road, neither in the affidavit in reply filed by the State Government nor in the oral submissions made by the learned AGP, these aspects have been highlighted. The entire focus in the affidavit in reply as well as oral submission has been that Nagarpalika erred in giving lease hold rights to the bidders when the plot actually belonged to the Government.

10.This objection need to be examined in light of the factual aspects involved in this group of petitions. Firstly it is not in dispute that Vijapur Nagarpalika held the public auction in the year 1968 calling for the interested parties to bid for 36 sub plots which were part of city survey no. 3252. It is not in dispute that pursuant to this public auction, highest bidders were allotted plots on lease. It is not in dispute that on the plots so leased out, the construction was carried out either by lease holders or sub-tenants. It is not in dispute that all these petitioners are occupying constructed properties over the plots so leased out. It is equally not in dispute that the petitioners are carrying on their small business over

the constructed properties since several decades. The construction was carried out with prior permission from the municipality and the same is not said to be not in accordance with building rules and regulations. The petitioners having been paying municipal taxes for their occupancy of the constructed premises. After 1968 for the first time in the year 1999 Government initiated steps to remove the construction. The only objection against the same was that the plots were leased out by the Nagarpalika though the plot originally belonged to the Government. Validity of this contention, I have not examined for want of sufficient material. Obviously, the petitioners would not be in a position to establish the title of the Nagarpalika over the lands in question. Except for stating that the lands were shown in the revenue records in the name of Nagarpalika, they have not been able to state anything further in this regard. The State Government except for making assertion that the land did not belong to Nagarpalika and it was the land belonging to State Government, has produced no further record. Irrespective of this question, important aspect of this matter is whether the State Government is permitted to take up this issue after more than 30 years. If at all it was an error, the error was on the part of the

Nagarpalika to hold out a promise to the general public at large that Nagarpalika as the owner of the land in question is authorised to lease out the same to the highest bidder. Additionally, it was also inaction on the part of the Government, for more than 30 years ,to rectify this mistake even if it is presumed to be the one.

11.In so far as the petitioners are concerned at any rate they would be the innocent sufferers of error on the part of the Nagarpalika on one hand and inaction on the part of the Government on the other hand. The petitioners have put in their hard earned money for acquiring a small place for business. By permitting the Government to proceed further with the proposed action of removing the construction, this Court would be authorising the Government in ousting the petitioners who can be under no circumstances faulted for having acquired the rights over the properties in question. Considering the fact that Nagarpalika held public auction in the year 1968 pursuant to which the plots were leased out, considering the fact that from the year 1968 till 1999 Government took no action to initiate any proceedings in this regard, considering the fact that there is no sufficient material on record

to conclude the controversy regarding the original ownership of the properties in question, considering the fact that the petitioners have been enjoying the use and occupation of the properties in question since decades, considering the fact that it has not been the case that construction in any manner infringes any of the building bylaws, rules and regulations and lastly considering the fact that it is not even the case of the Government that construction encroached on any public road, I do not find it appropriate at this stage to permit the Government to proceed further with the proposed show cause notice. Though titled as show cause notice, notice dated 02-02-1999 is based on the conclusion of the Government that the occupation of the petitioners is unauthorised. No useful purpose would therefore, be served in relegating the petitioners to the Government since in so far as the stand of the Government is concerned, the same cannot be stated to be tentative.

12. In the result, in facts of this case, I find that the petitioners have made out a good case for interference. The impugned notices which are under challenge in this group of petitions are quashed. Rule is made absolute with no order as to costs.

(Akil Kureshi,J.)

(raghu)